Docket #0740 Date Filed: 09/22/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
	§	
Debtors.[1]	§	**(Jointly Administered)**
	§	

DECLARATION OF ELLIOTT ETHERIDGE-YAN IN SUPPORT OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING NBN TRANSACTION, INCLUDING (A) PRIVATE SALE FREE AND CLEAR OF ALLLIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS, AND (C) SETTLEMENT AND RELEASE OF CLAIMS, (II) APPROVING FORM AND MANNER OF NOTICES OF NBN TRANSACTION, AND (III) GRANTING RELATED RELIEF

I, Elliott Etheridge-Yan, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

Background

1. I am an Executive Director of Moelis Australia ("**Moelis**"), the financial advisors to SpeedCast International Limited ("**Speedcast**") and its debtor affiliates in the above-captioned chapter 11 cases (collectively, the "**Debtors**"). The Debtors, combined with their non-debtor affiliates, are a provider of remote and offshore satellite communications and information technology services. On April 23, 2020, the Debtors commenced in this Court voluntary cases under chapter 11 of title 11 of the Bankruptcy Code (the "**Bankruptcy Code**"). I

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

am knowledgeable about, and familiar with, the Debtors' businesses and financial affairs, and I was responsible for assisting Speedcast in negotiations with nbn co limited ("**Buyer**") to arrive at the terms of the proposed sale.

2. I submit this declaration (the "**Declaration**") in support of the *Motion of Debtors for Entry of an Order (I) Authorizing and Approving nbn Transaction, Including (A) Private Sale Free and Clear of all Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment of Certain Contracts, and (C) Settlement and Release of Claims, (II) Approving Form and Manner of Notices of nbn Transaction, and (III) Granting Related Relief* [ECF No. 739] (the "**Motion**").[2]

3. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, my opinion based upon experience, knowledge, and information concerning the Debtors' operations and financial condition, and/or my discussions with the Debtors' officers, directors, and restructuring advisors. If called upon to testify, I would and could testify to the facts set forth in this Declaration.

Facts Relevant to Motion

A. Negotiations with Buyer

4. As stated above, Moelis is engaged as a financial advisor to the Debtors.

5. Moelis has assisted the Debtors, alongside its legal counsel, with negotiating, at arms'-length and in good faith, the indicative term sheet and the agreed and final version of the Transition Agreement (as defined below) which includes, among other things, an

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

agreement to transfer substantially all of its accounts receivable, inventory, intellectual property (collectively, the "**SMS Assets**"), and certain personnel ("**SMS Employees**") to contract counterparty, Buyer (collectively, the "**nbn Transaction**").

6. Speedcast Managed Services Pty Ltd ("**SMS**") and Buyer entered into a 10-year Master Equipment and Services Supply Agreement ("**MESSA**") on February 2, 2018, to design, build, and manage Buyer's enterprise satellite services. Buyer is a publicly owned corporation of the Australian Government, tasked to design, build, and operate Australia's National Broadband Network as Australia's wholesale broadband provider. Buyer is not a mere continuation of or successor to any Debtor or its estate in any respect. Buyer is not an "insider" or "affiliate" of any of the Debtors as those terms are defined in section 101 of the Bankruptcy Code.

7. The MESSA has historically been unprofitable for SMS, generating an EBITDA loss since inception of approximately $0.3 million USD ($0.4 million AUD). The MESSA has also been a significant cash drain for SMS, with negative cumulative cash flow since inception of approximately $16 million USD ($22 million AUD).

8. In addition, Buyer has alleged claims under the MESSA for up to approximately $9 million USD ($12.3 million AUD) based on allegations by Buyer that SMS failed to achieve certain milestones under the MESSA within the agreed timetable. SMS disputes these claims and they remain unresolved between SMS and Buyer. A portion of the MESSA is backed by a performance bond in an amount of approximately $4.1 million USD ($5.6 million AUD). On the other hand, SMS has claims against Buyer under the MESSA for unpaid milestone payments.

9. The MESSA contains agreements that are relatively one-sided in favor of Buyer, which include the right of Buyer to terminate the MESSA for convenience. It is my understanding that a termination for convenience by Buyer could result in damages payable by SMS to Buyer.

10. The prospect for future profitability under the MESSA is speculative and contingent upon potential pipeline opportunities SMS has identified. There is substantial risk that such opportunities will not materialize. Based on these factors, SMS entered into negotiations with Buyer regarding a potential termination of the MESSA and a transfer of SMS Assets to Buyer.

11. On April 21, 2020, Buyer issued a Non-Binding Indicative Offer ("**NBIO**") to in-source the services currently provided by the Debtors under the MESSA. Following an additional period of preliminary due diligence, Buyer issued a second NBIO on May 19, 2020, and a further revised NBIO ("**Revised NBIO**") on June 5, 2020. The Revised NBIO proposed an agreed termination of the MESSA, a purchase of the SMS Assets, and the assumption of certain liabilities and contracts for cash consideration paid by Buyer. The proposed transaction also contemplates the engagement of SMS Employees by Buyer. Other benefits of the Transition Agreement include the mutual release of all historical, present, and future claims they have against each other under the MESSA.

12. Since the issuance of the NBIO, the Debtors' management and Moelis have been involved in arms'-length, good-faith negotiations with Buyer, which is not an "insider" or "affiliate" of any of the Debtors as defined in section 101 of the Bankruptcy Code, with respect to the terms of a proposed transaction. Those negotiations and further diligence by the Buyer resulted in the execution of the Transition Agreement. The assets being transferred to, and the liabilities being assumed by, Buyer are related exclusively to the MESSA, and the MESSA includes

restrictions on the ability for a third party to step into the shoes of SMS. Because of the character of the SMS Assets, consents required, and the complexity of the MESSA, it is my belief that Buyer is the only reasonable counterparty to the nbn Transaction.

13. The nbn Transaction is governed by the terms of the transition agreement ("**Transition Agreement**"), between the Debtors and Buyer, which was signed on September 16, 2020. The Transition Agreement provides for the sale of the SMS Assets to Buyer for $12.7 million USD ($18.1 million AUD), the termination of the MESSA, and a settlement of claims between the Debtors and Buyer arising from or relating to the MESSA. The nbn Transaction will allow SMS and other Debtors to simplify operations by shedding this unprofitable and non-core business. Without the settlement and mutual releases embodied in the Transition Agreement, SMS and the Debtors would need to explore other, potentially more costly, solutions to the controversies under the MESSA. Indeed, monetizing the value in the SMS business far outweighs the value, if any, in potential litigation claims against Buyer, particularly taking into account the potential costs of such litigation and the significant counterclaims that Buyer would likely assert.

B. Key Terms of the Transition Agreement

14. The nbn Transaction is structured as an agreed termination of the MESSA and purchase of the SMS Assets, together with the assumption of certain SMS liabilities and transfer of SMS Employees. The transaction is intended to facilitate a controlled transition of the project management and managed services under the MESSA to Buyer.

15. Consideration for the SMS Assets and provision of services under Transition Agreement include:

a. payment by Buyer of the purchase price ("**Asset Purchase Price**");

b. assumption by Buyer of the proposed assumed and assigned contracts listed on **Exhibit 1** ("**Proposed Assigned Contracts**") to the Proposed Order;

c. assumption of all the future entitlements and liabilities in respect of each SMS Employee who accepts an offer of employment with Buyer;

d. payment by Buyer for the provision by SMS of the transition services prior to completion under the Transition Agreement; and

e. payment by Buyer in relation to the accrued managed services fees and milestone payments under the MESSA ("**Accrued Services Fees**").

16. In total, the monetary consideration to be paid to SMS by Buyer upon Completion (as defined in the Transition Agreement) is approximately $12.7 million USD ($18.1 million AUD) and is subject to adjustment at Completion. All monetary consideration, other than the amount referred to in paragraph 22 below, is required to be paid by Buyer to SMS on Completion.

17. Subject to and conditional on the occurrence of Completion, SMS and Buyer have agreed to terminate the MESSA on and from Completion and provide each other with mutual releases from all historical, present, and future claims they have against each other under the MESSA.

18. Completion of the transactions contemplated under the Transition Agreement is conditional on a limited number of conditions precedent being satisfied or waived prior to Completion, including:

i. approval of the Court for the nbn Transaction;

ii. formal novation of an agreed list of material Proposed Assigned Contracts in **Exhibit 1** being agreed to by each counterparty to the relevant list of material Proposed Assigned Contracts, each such novation to include mutual releases by SMS and each applicable contract counterparty in respect of all claims arising under or in connection with the relevant Proposed Assigned Contract; and

iii. certain key SMS Employees, and a specified aggregate number of total SMS Employees, accepting offers of employment with Buyer.

19. If any Proposed Assigned Contract has not been formally novated with the consent of the applicable counterparties to the Proposed Assigned Contract before Completion under the Transition Agreement, SMS and Buyer have agreed to continue to procure a novation of such contract for period of three (3) months following Completion. If a novation cannot be secured within this period, either SMS or Buyer may terminate the relevant Proposed Assigned Contract.

20. The Transition Agreement includes customary pre-completion covenants on the part of SMS requiring SMS to continue to carry on business in the ordinary course prior to Completion under the Transition Agreement.

21. Under the Transition Agreement, SMS provides Buyer with a limited set of warranties as to title and ownership of the SMS Assets and transferability of key intellectual property rights relating to the SMS Assets. The SMS Assets are otherwise being transferred to Buyer on an "as is, where is" basis.

22. The Transition Agreement includes a comprehensive limitation of liability regime for the benefit of SMS, including a 12-month time limitation for Buyer to bring claims against SMS and a total aggregate liability cap in respect of SMS's liability to Buyer under the Transition Agreement. The Transition Agreement provides that an additional contingent amount of $1.75 million USD ($2.5 million AUD) of the Asset Purchase Price will become payable by Buyer to SMS if and on the earlier of (i) the date that all claims (if any) made by Buyer under the Transition Agreement are resolved; and (ii) 12 months after the Completion date. Buyer may offset from that amount any claim against SMS which is resolved in favor of Buyer during the 12-month period after Completion. No other security is provided by SMS for claims by Buyer against SMS under the Transition Agreement.

Conclusion

23. Based on my knowledge, and information concerning the Debtors' operations and financial condition, and my discussions with the Debtors' officers, directors, and restructuring advisors, the nbn Transaction provides a significant opportunity for the Debtors to streamline the business operations of SMS, minimize risk and liabilities for the Debtors and therefore generate further returns for the Debtors' estates.

24. Based on the foregoing, I believe that the nbn Transaction, and the assumption and assignment of the Proposed Assigned Contracts that is necessary and integral to it, is in the best interest of the Debtors' estates and is a sound exercise of the Debtors' business judgment.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 22, 2020
Sydney, Australia

/s/ Elliott Etheridge-Yan
Elliott Etheridge-Yan
Executive Director
Moelis Australia